

FILED

NOV 1
2012 067-32 AM 10:38

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

BY

1 CARPENTER, ROTHANS & DUMONT
2 Steven J. Rothans (SBN 106579)
3 srothans@crdlaw.com
4 Jill Williams (SBN 221793)
5 jwilliams@crdlaw.com
6 888 S. Figueroa Street, Suite 1960
7 Los Angeles, CA 90017
8 Tel: (213) 228-0400 Fax: (213) 228-0401

9 CRISTINA L. TALLEY, CITY ATTORNEY
10 MOSES W. JOHNSON, IV (SBN 118769)
11 Assistant City Attorney
12 E-mail: mjohnson@anaheim.net
13 200 S. Anaheim Boulevard, Suite 356
14 Anaheim, California 92805
15 Tel: (714) 765-5169 Fax: (714) 765-5123

16 Attorneys for Defendants CITY OF
17 ANAHEIM; CITY OF ANAHEIM erroneously
18 sued as ANAHEIM POLICE DEPARTMENT;
19 JOHN WELTER AND OFFICER NICK
20 BENNALLACK

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA

23 ESTATE OF MANUEL DIAZ;
24 GENEVIEVE HUIZAR, an
25 individual; JOHN HUIZAR, an
26 individual, and; LUPE DIAZ, an
individual,

Plaintiffs,

v.

27 CITY OF ANAHEIM, a California
28 municipal entity; ANAHEIM
POLICE DEPARTMENT, a
California municipal entity; JOHN
WELTER; OFFICER NICK
BENNALLACK; OFFICER DOE 2;
and Does 1-10, inclusive,

Defendants.

Case No.: SACV 12-01897 JVS

(RNBx)

NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C. §1441(b)
FEDERAL QUESTION

✓

N/S

1440

Paid
350

TO THE CLERK OF THE ABOVE-ENTITLED COURT:
PLEASE TAKE NOTICE that Defendants CITY OF ANAHEIM, CITY

1 OF ANAHEIM, erroneously sued as ANAHEIM POLICE DEPARTMENT,
2 JOHN WELTER and OFFICER NICK BENNALLACK hereby remove to this
3 Court the state court action described below.

4 1. On July 24, 2012 an action was commenced in the Superior Court of
5 the State of California in and for the County of Orange, entitled Estate of Manuel
6 Diaz; Genevieve Huizar, John Huizar and Lupe Diaz, Plaintiffs, vs. City of
7 Anaheim, Anaheim Police Department, John Welter and Officer Nick
8 Bennallack, as case number 30-2012 00585728.

9 2. On October 9, 2012, Plaintiffs filed a First Amended Complaint for
10 Damages in this case hereto attached as Exhibit "A."

11 3. The first date upon which Defendants, City of Anaheim, City of
12 Anaheim erroneously sued as Anaheim Police Department, John Welter and
13 Officer Nick Bennallack received a copy of the said first amended complaint was
14 October 10, 2012, when Defendants were served with a copy of the said first
15 amended complaint and a summons from the state court. A copy of the
16 summons is attached hereto as Exhibit "B".

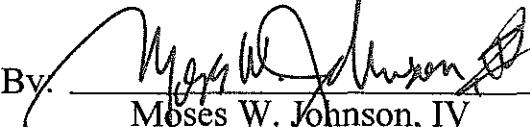
17 4. Defendants, City of Anaheim, City of Anaheim erroneously sued as
18 Anaheim Police Department, John Welter and Officer Nick Bennallack were
19 never served with the original summons and complaint by Plaintiffs.

20 5. This action is a civil action of which this Court has original
21 jurisdiction under 28 U.S.C. §1331, and is one which may be removed to this
22 Court by Defendants pursuant to the provisions of 28 U.S.C. §1441(b) in that it
23 arises under 42 U.S.C. §1983 and the Fourth and Fourteenth Amendments to the
24 United States Constitution.

25 6. All Defendants who have been served with the summons and first
26 amended complaint have joined in this Notice of Removal, as evidenced by the
27 fact that they are all represented by the Anaheim City Attorney's Office and
28 Carpenter, Rothans and Dumont.

1 Dated: November 1, 2012

CRISTINA L. TALLEY, CITY ATTORNEY

2 By: 

3
4 Moses W. Johnson, IV
5 Assistant City Attorney
6 Attorneys for Defendants
7 CITY OF ANAHEIM; CITY OF
8 ANAHEIM erroneously sued as
9 ANAHEIM POLICE
10 DEPARTMENT; JOHN WELTER
11 AND OFFICER NICK
12 BENNALLACK

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 91978v1

EXHIBIT A

1 Dana L. Douglas, SBN 158548
2 Diana Lopez, SBN 267337
3 James F. Rumm, SBN 224412
4 **DOUGLAS, LOPEZ & RUMM, LLP**
5 333 S. Anita Drive, Suite 780
Orange, CA 92868
Telephone: (714) 634-3800
Facsimile: (866) 927-0571

6 Attorney for Plaintiffs, Estate of Manuel Diaz,
7 Genevieve Huizar, John Huizar and Lupe Diaz

ELECTRONICALLY FILED

Superior Court of California,
County of Orange

10/09/2012 at 08:00:00 AM

Clerk of the Superior Court
By Fidel Ibarra, Deputy Clerk

RECEIVED

2012 OCT 10 P 12:28

OFFICE OF CITY CLERK
CITY OF ANAHEIM

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF ORANGE

10
11 ESTATE OF MANUEL DIAZ;
12 GENEVIEVE HUIZAR, an individual;
13 JOHN HUIZAR, an individual, and;
14 LUPE DIAZ, an individual,

15 Plaintiffs,

16 vs.

17 CITY OF ANAHEIM, a California
18 municipal entity; ANAHEIM POLICE
19 DEPARTMENT, a California municipal
entity; JOHN WELTER; OFFICER NICK
BENNALLACK; OFFICER DOE 2; and
Does 1-10, inclusive,

20 Defendants.

21 CASE NO: 30-2012-00585728

22 **FIRST AMENDED COMPLAINT
FOR DAMAGES**

1. **WRONGFUL DEATH**
2. **NEGLIGENCE**
3. **NEGLIGENT HIRING,
RETENTION AND TRAINING**
4. **DEPRIVATION OF CIVIL
RIGHTS UNDER COLOR OF
LAW;**
5. **DEPRIVATION OF CIVIL
RIGHTS UNDER COLOR OF
LAW (MONELL CLAIM)**

23 **DEMAND FOR JURY TRIAL**

24 **INTRODUCTION**

25 1. Plaintiffs, Estate of Manuel Diaz, Genevieve Huizar, John Huizar and Lupe Diaz,
seek judgment against Defendants the City of Anaheim; Anaheim Police Department; John
26 Welter, Officer Nick "Buckshot" Bennallack and Officer Doe 2 and Does 1-10 Defendants, for
27 wrongful death as the result of shooting and subsequent death of Manuel Diaz by officers of the
28 Anaheim Police Department on July 21, 2012 in the City of Anaheim, California.

2. It is herein alleged that Defendants, Officer Nick "Buckshot" Bennallack and Officer Doe 2, without legal cause or excuse, unreasonably shot and killed Manuel Diaz on July 21, 2012.

THE PARTIES

3. Plaintiff, THE ESTATE OF MANUEL DIAZ appears by and through its successors-in-interests and representatives GENEVIEVE HUIZAR, JOHN HUIZAR and LUPE DIAZ.

4. At all times herein mentioned, Plaintiff Genevieve Huizar is, and was, an individual residing in the County of Orange, State of California and the mother of decedent Manuel Diaz. Plaintiff Genevieve Huizar is an "heir at law" of decedent Manuel Diaz and is one of the surviving "parent" of decedent Manuel Diaz as that term is defined by California Code of Civil Procedure Section 377.60(a) and has legal standing to maintain an action for wrongful death based upon the death of her son, Manuel Diaz, under California Code of Civil Procedure Section 377.60.

5. At all times herein mentioned, Plaintiff John Huizar is, and was, an individual residing in the County of Orange, State of California and the step-father of decedent Manuel Diaz and was receiving financial support from him. Plaintiff John Huizar is an "heir at law" of decedent Manuel Diaz and is one of the surviving "step-parent" of decedent Manuel Diaz as that term is defined by California Code of Civil Procedure Section 377.60 and has legal standing to maintain an action for wrongful death based upon the death of his son, Manuel Diaz, under California Code of Civil Procedure Section 377.60.

6. At all times herein mentioned, Plaintiff Lupe Diaz is, and was, an individual residing in the County of Orange, State of California and the sister of decedent Manuel Diaz and was receiving financial support from him. Plaintiff Lupe Diaz is an "heir at law" of decedent Manuel Diaz and is one of the surviving "sibling" of decedent Manuel Diaz as that term is defined by California Code of Civil Procedure Section 377.60 and has legal standing to maintain an action for wrongful death based upon the death of her brother, Manuel Diaz, under California Code of Civil Procedure Section 377.60.

1 7. Upon information and belief, defendant, City of Anaheim ("Anaheim"), is and
2 was, at all times relevant to the matters alleged in this complaint, a municipal entity organized
3 under the laws of the State of California, County of Orange, and the public employer of the
4 police officers named as defendants in this action.

5 8. Upon information and belief, defendant, Anaheim Police Department ("Police
6 Department"), is and was, at all times relevant herein to the matters alleged in this complaint, a
7 separate department of Defendant Anaheim, organized under the laws of the State of California,
8 County of Orange, City of Anaheim.

9 9. Upon information and belief, defendant, Officer John Welter ("Welter"), was at
10 all times relevant to the matters alleged in this complaint, the Chief of Police of Defendant
11 Anaheim Police Department. Defendant Welter was individually and in his official capacity as
12 Chief of Police, Anaheim Police Department, the head policy maker of the Anaheim Police
13 Department.

14 10. Upon information and belief, defendant, Officer Nick Bennallack (also known as
15 Nick "Buckshot" Bennallack), is and was, at all times relevant herein to the matters alleged in
16 this complaint, a police officer with the Anaheim Police Department. At all times herein
17 mentioned, Defendant Officer Bennallack is, and was, a police officer employed by Defendants
18 Anaheim and Police Department and, in doing the things herein alleged, was acting within the
19 course and scope of his employment and was acting under color of law.

20 11. Upon information and belief, defendant, Officer Doe 2, is and was, at all times
21 relevant herein to the matters alleged in this complaint, a police officer with the Anaheim Police
22 Department. At all times herein mentioned, Defendant Officer Doe 2 is, and was, a police
23 officer employed by Defendants Anaheim and Police Department and, in doing the things herein
24 alleged, was acting within the course and scope of his employment and was acting under color of
25 law. Plaintiffs are unaware of the true name of Officer Doe 2 and Plaintiffs will amend this
26 complaint to allege said defendant's true name becomes known to them.

27 12. In addition to the facts alleged in the following paragraphs, the following
28 defendants are all sued in their individual and official capacities and all acted within the scope of

1 their employment and under color of state law, to wit, under color of statutes, ordinances,
2 regulations, policies, customs and usages of the State of California and/or the City of Anaheim:

3 a. Defendant Welter, at all times relevant herein, the Chief of Police of the City of
4 Anaheim;
5 b. Defendants Anaheim Police Department Officer Bennallack and Officer Doe 2
6 and others, the identity and number of whom are presently unknown to Plaintiffs,
7 were, at all times relevant herein to the matters alleged in this complaint,
8 employed as police officers by Defendant Anaheim and Police Department.

9 13. Plaintiffs are unaware of the true names and capacities of those defendants sued
10 herein as DOE defendants. Plaintiffs will amend this complaint to allege said defendants' true
11 names and capacities when that information becomes known to them. Plaintiffs are informed
12 and believe, and thereon allege, that these DOE defendants are legally responsible and liable for
13 the incident, injuries and damages hereinafter set forth, and that each of said defendants legally
14 and approximately caused the injuries and damages by reason of negligent, careless, deliberately
15 indifferent, intentional, willful or wanton misconduct, including the negligent, careless,
16 deliberately indifferent, intentional, willful and wanton misconduct in creating and otherwise
17 causing the incidents, conditions and circumstances hereinafter set forth, by reason of direct or
18 imputed negligence or vicarious fault or breach of duty arising out of the matters herein alleged.
19 Plaintiffs will seek leave to amend this complaint to set forth said true names and identities of the
20 unknown DOE defendants when they are ascertained.

21 14. Plaintiffs are informed and believe, and thereon allege, that, at all times herein
22 mentioned, each of the defendants was the agent and/or employee and/or co-conspirator of each
23 of the remaining defendants, and in doing the things hereinafter alleged, was acting within the
24 scope of such agency, employment and/or conspiracy and with the permission and consent of the
25 other co-defendants. The acts of each of the Defendants were adopted by and ratified by the
26 remaining Defendants.

27 15. Defendants Anaheim, Police Department and Welter either encouraged, assisted,
28 ratified and/or with deliberate indifference failed to prevent any of the acts complained of herein.

FACTS COMMON TO ALL COUNTS

16. On July 21, 2012, decedent, Manuel Diaz, was in the City of Anaheim, visiting some friends of his near the intersection of La Palma and Anna Drive.

17. At approximately 4:00 p.m., Decedent, Manuel Diaz was near the 600 Block of Anna Drive in Anaheim, California, speaking with some acquaintances.

18. Plaintiffs are informed, believe and thereon allege that Defendants Officer Nick "Buckshot" Bennallack and Officer Doe 2, observed Manuel Diaz and began chasing him, despite the fact that Manuel Diaz was not violating any laws or wanted for any legal violations.

19. Plaintiffs are informed, believe and thereon allege that Officer Bennallack and Officer Doe 2 were in an unmarked police vehicle and may have had another person present in the car with them at the time.

20. Plaintiffs are informed, believe and thereon allege that Manuel Diaz responded instinctively when he saw people chasing him and began to run.

21. Plaintiffs are informed, believe and thereon allege that Officer Bennallack, and Officer Doe 2, chased after Manuel Diaz when they saw him running.

22. At the time, Manuel Diaz was unarmed, was committing no crime and did not pose a threat to Officer Bennallack, Officer Doe 2, or anyone else.

23. Plaintiffs are informed, believe and thereon allege that while Manuel Diaz was running away, Officer Nick "Buckshot" Bennallack fired his sidearm once toward Manuel Diaz's legs, which resulted in an injury that caused Manuel Diaz to fall to the ground.

24. Plaintiffs are informed, believe and thereon allege that after Manuel Diaz fell to the ground Officer Bennallack and/or Officer Doe 2 fired a second gun-shot into the back of Manuel Diaz's head, which resulted in the injury that caused Manuel Diaz's death.

25. There was no justification for shooting Manuel Diaz. Manuel Diaz had committed no crime, did not possess any type of weapon and posed no threat of harm to Officer Bennallack, Officer Doe 2 or anyone else.

26. The wrongful death of Manuel Diaz was witnessed by numerous individuals on Anna Drive on the afternoon of July 21, 2012, and the callous and wrongful nature of the death

1 was so shocking that it led to an immediate protest against the police on the scene by members of
2 the neighborhood.

3 27. Furthermore, after Officer Bennallack and Officer Doe 2 shot Manuel Diaz, rather
4 than providing medical attention to Manuel Diaz, Officer Bennallack, Officer Doe 2 and other
5 officers of the Anaheim Police Department searched for any type of evidence of weapons or
6 drugs that they could say had come from Manuel Diaz but were unable to find any. Meanwhile,
7 Manuel Diaz lay face down on the ground bleeding from his head without receiving any medical
8 attention or first aid.

9 28. The officers of Defendant Police Department have been engaging in far reaching
10 and overly aggressive enforcement procedures which have led to the killing of numerous
11 different individuals in an unwritten policy and procedure of Defendant Police Department to
12 intimidate individuals in Anaheim through the violence and murder of individuals such as
13 Manuel Diaz.

14 29. The policies and procedures of Defendant Police Department were ratified and
15 were made known to officers of Defendant Police Department at the direction of Defendant
16 Welter.

17 30. Plaintiffs allege that on or about July 21, 2012, in the City of Anaheim,
18 California, decedent Manuel Diaz was arrested and detained, under color of state law, and
19 without apparent cause, by Defendants Officer Nick "Buckshot" Bennallack and Officer Doe 2,
20 hereinafter referred to as "Defendant Officers."

21 31. Plaintiffs are informed and believe that in the course of detaining Manuel Diaz,
22 Defendant Officers unnecessarily and unjustifiably shot Manuel Diaz in his leg and then in the
23 back of his head causing his death. This conduct was intentional, reckless and in violation of
24 Manuel Diaz's Constitutional rights.

25 32. Plaintiffs allege that on or about July 21, 2012, Defendant Officers, while so
26 employed by Defendants Anaheim and Police Department, and acting under color of law,
27 arrested, assaulted and battered Manuel Diaz in violation of his rights under the Fourth, Fifth,
28 Eighth and Fourteenth Amendments of the United States Constitution.

1 33. Plaintiffs are informed and believe that the force used by Defendant Officers was
2 unjustified and excessive. Manuel Diaz was unarmed, had committed no crime and was not a
3 threat to the safety of Defendants or others.

4 34. As a direct and proximate result of the aforementioned acts of Defendants, and
5 each of them, Manuel Diaz suffered the following injuries and damages for which Plaintiffs may
6 recover:

- 7 a. Violation of Manuel Diaz's Constitutional Rights;
- 8 b. Loss of the life of Manuel Diaz including the value of his life;
- 9 c. Conscious physical pain, suffering and emotional trauma during the incident of
10 July 21, 2012 until his death.
- 11 d. Decedent Manuel Diaz's medical bills incurred attempting to save his life.

12 35. As a direct and proximate result of the actions of Defendants, and each of them,
13 Plaintiffs have also suffered the following injuries, including but not limited to:

- 14 a. Loss of love, aide, comfort and society due to the death of decedent Manuel Diaz,
15 according to proof;
- 16 b. Loss of economic support of decedent Manuel Diaz; and
- 17 c. Funeral and burial expenses according to proof.

18 36. Defendants Anaheim and Police Department are liable through the application of
19 *respondeat superior* pursuant to Sections 815.2, 820 and 825 of the California Government Code
20 for the acts of its employees named herein who at all times alleged herein were acting within the
21 course and scope of their employment with said public entities.

22 37. On July 24, 2012, a claim was presented by Plaintiffs to Defendant Anaheim
23 pursuant to and in substantial compliance with California Government Code section 910 for
24 damages sustained as a result of the incident set forth below. On September 10, 2012, said claim
25 was rejected by operation of law, and the current Complaint is timely filed as to all State claims.
26 All prerequisite California Government Code claims filing requirements in relation to this case
27 have been satisfied as to Defendants Anaheim and Police Department, Officer Bennallack,
28 Officer Doe 2 and Police Chief John Welter.

FIRST CAUSE OF ACTION

(By All Plaintiffs Against All Defendants and DOES 1-10)

For INTENTIONAL WRONGFUL DEATH (C.C.P. §377.60))

38. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs 1 through 37 as though fully set forth hereinafter.

39. On or about July 21, 2012, defendants, and each of them, acting within the course and scope of their employment with the Anaheim Police Department, forcefully assaulted Plaintiffs' decedent, and, Plaintiffs are informed and believe, that in the course of assaulting Plaintiffs' decedent Defendant Officer Nick "Buckshot" Bennallack and Officer Doe 2, fatally shot Plaintiffs' decedent in a show of unnecessary, intentional and unsafe use of force upon Plaintiffs' decedent. As a result of Defendants' actions Plaintiffs' decedent died later that day on July 21, 2012.

40. Moreover, as a legal, direct and proximate cause of the aforesaid conduct, Plaintiffs have suffered, and continue to suffer the loss of Plaintiffs' decedent.

41. Said assault and battery was not consented to by Plaintiffs' decedent, nor was the defendants' infliction of serious bodily injury upon Plaintiffs' decedent privileged or immunized by the laws of the State of California.

42. Each of the individual defendants and the municipal defendants acted in concert and without authorization of law and each of the individual defendants, separately and in concert, acted willfully, knowingly, with reckless disregard and callous indifference, and purposely with the intent to deprive Plaintiffs' decedent of his rights and privileges, and did in fact violate the aforementioned rights and privileges, entitling Plaintiffs to exemplary and punitive damages against the individual defendants Officer Bennallack and Officer Doe 2 in an amount to be proven at the trial of this matter.

43. As a direct and proximate result of the actions of Defendants, and each of them, Plaintiffs have also suffered the following injuries, including but not limited to:

a. Loss of love, aide, comfort and society due to the death of decedent Manuel Diaz, according to proof;

- b. Loss of economic support of decedent Manuel Diaz; and
- c. Funeral and burial expenses according to proof.

SECOND CAUSE OF ACTION

**(By Plaintiffs Against All Defendants and DOES 1-10 for NEGLIGENT WRONGFUL
DEATH (C.C.P. §377.60))**

44. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs 1 through 43 as though fully set forth hereinafter.

45. On or about July 21, 2012, defendants Officer Nick "Buckshot" Bennallack and Officer Doe 2 so negligently attempted to restrain and detain by use of deadly force upon Manuel Diaz so as to cause him serious bodily injury, and ultimately his death.

46. As a direct, legal and proximate result of defendants' negligence, Plaintiffs' decedent suffered, bodily injuries, mental injuries and emotional distress and died from his injuries on July 21, 2012.

47. At all times herein mentioned, Defendants Officer Nick "Buckshot" Bennallack and Officer Doe 2 violated Anaheim Police Department procedures with regard to the use of deadly force such that Defendants recklessly and/or negligently caused injuries and the eventual death of Manuel Diaz.

48. As a direct and proximate result of the actions of Defendants, and each of them, Plaintiffs have suffered the following injuries, including but not limited to:

- a. Loss of love, aide, comfort and society due to the death of decedent Manuel Diaz, according to proof;
- b. Loss of economic support of decedent Manuel Diaz; and
- c. Funeral and burial expenses according to proof.

THIRD CAUSE OF ACTION

**(By Plaintiffs Against Defendants ANAHEIM, POLICE DEPARTMENT and WELTER For
NEGIGENT HIRING, TRAINING AND RETENTION leading to For WRONGFUL
DEATH (C.C.P. §377.60))**

49. Plaintiffs repeat and reallege each and every allegation of the foregoing

1 paragraphs 1 through 48 as though fully set forth hereinafter.

2 50. Plaintiffs are informed and believe and thereon allege that Defendants Anaheim,
3 Police Department and Welter were aware of the unfitness of Defendants Officer Nick
4 "Buckshot" Bennallack and Officer Doe 2 and that Defendants Anaheim, Police Department and
5 Welter, as a policy, custom and practice of Defendants Anaheim and Police Department
6 continued to employ and utilize Defendants Officer Nick "Buckshot" Bennallack and Officer
7 Doe 2 resulting in the death of Manuel Diaz.

8 51. At all times herein mentioned, Defendants City Of Anaheim, Police Department
9 and Welter were negligent in supervising the conduct of Defendants Officer Nick "Buckshot"
10 Bennallack and Officer Doe 2, resulting in the injuries and death of Manuel Diaz.

11 52. Plaintiffs are informed and believe, and thereon allege, that on or before July 21,
12 2012, Defendants Anaheim, Police Department and Welter so negligently hired, trained,
13 supervised, employed and/or managed Defendant Officer Nick "Buckshot" Bennallack and
14 Officer Doe 2 by failing and refusing to train Anaheim Police Department officers in proper
15 restraint techniques and use of deadly force to ensure that they did not pose an unreasonable risk
16 of serious bodily injury; in that the defendants knew or, in the exercise of reasonable diligence,
17 should have known, that these officers were dangerous and violent employees, prone to use
18 unnecessary force and in a manner that demonstrated callous disregard for the rights and safety
19 of civilian citizens, and assault and batter persons and/or use unnecessary, unreasonable, and/or
20 unlawful physical force without reasonable justification.

21 53. As a legal, direct and proximate result of the aforementioned negligence by
22 defendants, and each of them, Plaintiffs' decedent suffered bodily injuries, mental injuries and
23 emotional distress and died from his injuries.

24 54. As a direct and proximate result of the actions of Defendants, and each of them,
25 Plaintiffs have suffered the following injuries, including but not limited to:

26 a. Loss of love, aide, comfort and society due to the death of decedent Manuel Diaz,
27 according to proof;
28 b. Loss of economic support of decedent Manuel Diaz; and

c. Funeral and burial expenses according to proof.

FOURTH CAUSE OF ACTION

**(By All Plaintiffs Against All Defendants For DEPRIVATION OF CIVIL RIGHTS UNDER
COLOR OF LAW [42 USC §§1981, 1983, 1985, 1986 and 1988 including Wrongful Death and
Survival under Federal Violation of Civil Rights])**

55. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs 1 through 54 as though fully set forth hereinafter.

56. This cause of action is to redress a deprivation, under color of authority, statute, ordinance, regulation, policy, custom, practice or usage of a right, privilege and immunity secured to Plaintiffs by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the Constitution and laws of the State of California.

57. At all times mentioned herein, Defendants Anaheim and Police Department employed the individual defendants herein. Said defendants provided their individual defendant employees and agents with official badges and identification cards which designated and described the bearers as employees of Defendants Anaheim and Police Department.

58. During all times mentioned herein, the individual defendants, and each of them, separately and in concert, acted under color and pretense of law, under color of the statutes, ordinances, regulations, policies, practices, customs and usages of the State of California, City of Anaheim. Each of the individual defendants here, separately and in concert, deprived Decedent, Manuel Diaz of the rights, privileges and immunities secured to them by the Fourth and Fourteenth Amendments to the United States Constitution and the laws of the United States and the Constitution and laws of the State of California.

59. On or about July 21, 2012, Defendant Officers forcibly detained and seriously injured Manuel Diaz, Plaintiffs' decedent, as described above, all of which constituted excessive, unjustifiable, and unreasonable force in violation of Manuel Diaz, Plaintiffs' decedent's right to be free from unreasonable searches and seizures, and his due process right to be free from arbitrary deprivations of life, liberty, property and the pursuit of happiness. The above referenced

1 alleged conduct was done with deliberate indifference and/or intentionally by Defendant
2 Officers.

3 60. At all times herein relevant, and prior thereto, Defendants Welter, Police
4 Department and Anaheim had a duty to:

- 5 a. Train Anaheim Police Department officers to respect and protect the Federal
6 constitutional and California constitutional and statutory rights of citizens,
7 arrestees and detainees;
- 8 b. Supervise Anaheim Police Department officers to assure that they do not use
9 excessive force, and do not assault and batter citizens;
- 10 c. Supervise Anaheim Police Department officers to assure that they respect and
11 protect the Federal constitutional and California constitutional and statutory
12 rights of citizens, arrestees and detainees;
- 13 d. Not continue to employ officers of the Anaheim Police Department with a
14 propensity for violence and use of excessive force;
- 15 e. Refrain from the use of restraint techniques that can pose an unreasonable risk
16 of serious bodily injury, and constitute the use of unreasonable force;

17 61. To the contrary, Defendants Welter, Police Department and Anaheim have
18 illustrated their willful and deliberate indifference to the constitutional rights of Decedent,
19 Manuel Diaz and Plaintiffs by the following:

- 20 a. By failing, neglecting and refusing to train Anaheim Police Department officers to
21 respect and protect the Federal constitutional and California constitutional and
22 statutory rights of citizens, arrestees and detainees;
- 23 b. By failing, neglecting and refusing to supervise Anaheim Police Department
24 officers to assure that they do not use excessive force, and do not assault and
25 batter citizens;
- 26 c. By failing, neglecting and refusing to supervise Anaheim Police Department
27 officers to assure that they respect and protect the Federal constitutional and
28 California constitutional and statutory rights of citizens, arrestees and detainees;

- d. By failing, neglecting and refusing to terminate Anaheim Police Department officers with a propensity for violence and history of use of excessive force;
- e. By instituting a policy of excessive force and harm against individuals in an attempt to intimidate potential gang members in Anaheim.

62. The above acts or omissions of Defendant Officers were undertaken while under color of state law and resulted in the violation of Plaintiffs' constitutional rights, as stated herein. Likewise, the customs, practices, policies, and decisions of Defendants Welter, Police Department and Anaheim alleged herein and as applied to Plaintiffs, resulted in violation of Plaintiffs' decedent's constitutional rights.

63. At all times herein mentioned, there was no need for the force utilized against Plaintiffs' decedent, Manuel Diaz. There was no crime committed by Manuel Diaz and, Manuel Diaz did not pose an immediate threat to the safety of the Defendant Officers or others.

64. The above acts, omissions, customs, practices and/or decisions of the defendants, and each of them, while carried out under color of law, have no justification or excuse in law, and instead constitute a gross abuse of governmental authority and power, shock the conscience, are fundamentally unfair, arbitrary, and oppressive, and unrelated to any activity in which governmental officers may appropriately and legally undertake in the course of protecting persons, property, or ensuring civil order. The above acts, omissions, decisions, customs, practices and/or policies were consciously chosen from among various alternatives.

65. Each of the individual defendants and the municipal defendants acted in concert and without authorization of law and each of the individual defendants, separately and in concert, acted willfully, knowingly, with reckless disregard and callous indifference, and purposely with the intent to deprive Plaintiffs' decedent of his rights and privileges, and did in fact violate the aforementioned rights and privileges, entitling Plaintiffs to exemplary and punitive damages against the individual defendants Officer Nick "Buckshot" Bennallack and Officer Doe 2 in an amount to be proven at the trial of this matter.

66. As a direct, proximate result of the aforesaid acts, omissions, customs, practices, policies and decisions of the defendants, and each of them, Plaintiffs have suffered, and continue

1 to suffer, the loss of Plaintiffs' decedent who died because of Defendants' actions. Additionally,
2 due to the aforesaid acts, omissions, customs, practices, policies and decisions, Plaintiffs'
3 decedent was disabled from pursuing his usual occupation.

4 67. Plaintiffs may maintain causes of action under 42 U.S.C. §1983 as a Federal
5 Survival Action and recover damages for the value of the decedent's life and the decedent's pain
6 and suffering under cases interpreting 42 U.S.C. 1983 including Robertson v. Wegmann (1978)
7 436 U.S. 584, 595; Bass v. Wallenstein 769 F.2d 1173, 1190 (7th Cir. 1985); Guyton v. Phillips
8 532 F.Supp 1154, 1167-1168 (N.V. Cal. 1981) [disapproved on other grounds by Peraza v.
9 Delameter 722 F.2d 1455 (9th Cir. 1984)]; Williams v. City of Oakland 915 F.Supp 1074, 1079-
10 1080 (N.D. Cal. 1996); Garcia v. Whitehead 961 F.Supp 230, 233 (C.D. Cal. 1997); Bell v. City
11 of Milwaukee 746 F.2d 1205, 1235-1240 (7th Cir. 1985); McFadden v. Sanchez 710 F.2d 907,
12 911 (2nd Cir. 1983); and Jaco v. Bloechile 739 F.2d 239, 245 (6th Cir. 1984).

13 68. At all times herein mentioned, Plaintiffs are entitled to recover damages for the
14 value of decedent Manuel Diaz's life, as well as for decedent Manuel Diaz's pain and suffering.
15 This includes pain and suffering of decedent and the value of the loss of his life, which Plaintiffs
16 allege to be in excess of fifty million dollars (\$50,000,000.00).

17 69. As a direct and proximate result of the actions of Defendants, and each of them,
18 Plaintiffs have also suffered the following injuries, including but not limited to:

- 19 a. Loss of love, aide, comfort and society due to the death of decedent, Manuel Diaz,
20 according to proof;
- 21 b. Loss of economic support of decedent, Manuel Diaz; and
- 22 c. Funeral and burial expenses according to proof.

23 70. Additionally, Plaintiffs have been forced to incur substantial amounts for
24 attorneys' fees, investigation expenses, and other expenses in the vindication of Plaintiffs'
25 constitutional rights. Plaintiffs are entitled to and hereby demand costs, attorneys' fees and
26 expenses pursuant to 42 U.S.C. § 1988.

27 \\

28 \\

FIFTH CAUSE OF ACTION

(By All Plaintiffs Against Defendants Anaheim, Police Department and Welter and Does 1-10
for **DEPRIVATION OF CIVIL RIGHTS UNDER COLOR OF LAW (MONELL CLAIM)**)

[42 USC §§1983, 1985, 1986, 1988 including Wrongful Death and Survival under Federal
Violation of Civil Rights])

71. Plaintiffs repeat and reallege each and every allegation of the foregoing paragraphs 1 through 70 as though fully set forth hereinafter.

72. At all times herein mentioned, Defendants Anaheim and the Police Department maintained a custom, policy and practice to allow the violation of the Civil rights of individuals whom they were detaining, including applying excessive force against potential gang members in an attempt to harass and intimidate those individuals. All of these actions were done in violation of Plaintiffs' decedent, Manuel Diaz's Civil Rights under Color of State Law and constituted a systematic custom, policy, practice and procedure instituted for the denial of the Civil Rights of Plaintiffs' decedent and others.

73. Each of the individual defendants and the municipal defendants acted in concert and without authorization of law and each of the individual defendants, separately and in concert, acted willfully, knowingly, with reckless disregard and callous indifference, and purposely with the intent to deprive Plaintiffs' decedent of his rights and privileges, and did in fact violate the aforementioned rights and privileges, entitling Plaintiffs to exemplary and punitive damages against the individual defendants Officer Nick "Buckshot" Bennallack and Officer Doe 2 in an amount to be proven at the trial of this matter.

74. As a direct and proximate result of the aforementioned acts of Defendants, and each of them, Manuel Diaz suffered the following injuries and damages, which Plaintiffs allege to be in excess of fifty million dollars (\$50,000,000.00), for which Plaintiffs may recover:

a. Violation of Manuel Diaz's Constitutional Rights under the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution to be free from unreasonable search and seizure of his person and summary, cruel and unusual punishment;

1 b. Loss of the life of Manuel Diaz including the value of his life;
2 c. Conscious physical pain, suffering and emotional trauma during the incident of
3 July 21, 2012 through his death.

4 75. As a direct and proximate result of the actions of Defendants, and each of them,
5 Plaintiffs have also suffered the following injuries, including but not limited to:

6 a. Loss of love, aide, comfort and society due to the death of decedent, Manuel Diaz,
7 according to proof;
8 b. Loss of economic support of decedent Manuel Diaz; and
9 c. Funeral and burial expenses according to proof.

10 76. Additionally, Plaintiffs have been forced to incur substantial amounts for
11 attorneys' fees, investigation expenses, and other expenses in the vindication of Plaintiffs'
12 constitutional rights. Plaintiffs are entitled to and hereby demands costs, attorneys' fees and
13 expenses pursuant to 42 U.S.C. § 1988.

14

15 **WHEREFORE**, Plaintiffs pray for judgment against defendants as follows:

16 1. General damages for violation of Manuel Diaz's Constitutional Rights under the
17 Fourth, Fifth, Eighth and Fourteenth Amendments to the United States
18 Constitution to be free from unreasonable search and seizure of his person and
19 summary, cruel and unusual punishment in the sum of \$50,000,000.00;
20 2. General damages for loss of the life of Manuel Diaz including the value of his life
21 in an amount according to proof at the time of trial;
22 3. General damages for conscious physical pain, suffering and emotional trauma
23 during the incident of July 21, 2012 through Manuel Diaz's death in an amount
24 according to proof at the time of trial;
25 4. Loss of love, aid, comfort and society due to the death of decedent Manuel Diaz,
26 according to proof;
27 5. Loss of economic support of decedent Manuel Diaz in an amount according to
28 proof at the time of trial;

- 1 6. Funeral and burial expenses according to proof;
- 2 7. Decedent Manuel Diaz's medical bills incurred attempting to save his life.
- 3 8. Punitive damages to punish and make an example of the individual officer
- 4 defendants, Officer Nick "Buckshot" Bennallack and Officer Doe 2 in an amount
- 5 according to proof at the time of trial;
- 6 9. Attorneys' fees, investigation expenses, costs, and other expenses in the
- 7 vindication of Plaintiffs' Constitutional Rights under 42 U.S.C. §1988 in an
- 8 amount according to proof at the time of trial;
- 9 10. For other general damages in an amount according the proof at trial;
- 10 11. For other special damages in an amount according to proof at trial;
- 11 12. For pre-judgment and post-judgment interest; and
- 12 13. For such other and further relief as the Court may deem just and proper.

14 Dated: October 4, 2012

DOUGLAS, LOPEZ & RUMM, LLP

15 By: 

16 Dana L. Douglas
17 Diana Lopez
18 James F. Rumm
19 Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs, Estate of Manuel Diaz, Genevieve Huizar, John Huizar and Lupe Diaz, hereby demand a trial by jury.

Dated: October 4, 2012

DOUGLAS, LOPEZ & RUMM, LLP

By:

Dana L. Douglas

Diana B. Douglas

Diana Lopez
James E. Pur

James F. Kuhns
Attorneys for Plaintiffs

EXHIBIT B

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CITY OF ANAHEIM, a California municipal entity;

[ADDITIONAL PARTIES ATTACHMENT FORM IS ATTACHED]

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ESTATE OF MANUEL DIAZ; GENEVIEVE HUIZAR, an individual;
JOHN HUIZAR, an individual; LUPE DIAZ, an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

2012 OCT 10 PM 12:28 JUL 24 2012

ALAN CARLSON, Clerk of the Court

OFFICE OF CITY CLERK

CITY OF ANAHEIM

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California

County of Orange, Central Justice Center
700 Civic Center Drive West, Santa Ana, CA 92701

CASE NUMBER: **30-2012**
(Número del Caso):

0-05-8572-8

JUDGE ANDREW P. BANKS

DEPT. C11

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Dana Douglas, DOUGLAS, LOPEZ & RUMM, LLP 333 S. Anita Drive, Suite 780, Orange, CA 92868

DATE: **JUL 24 2012**

ALAN CARLSON

(Fecha)

Clerk, by
(Secretario)

HEATHER MITCHELL

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

NOTICE TO THE PERSON SERVED: You are served

[SEAL]

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

4. other (specify):

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 200 S. Anaheim Boulevard, Suite 356, Anaheim, California 92805.

On November 1, 2012, I served the foregoing document described as:

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §1441(b) FEDERAL QUESTION

on interested parties in this action by placing the original/a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Dana L. Douglas, Esq.	714-634-3800
Diana Lopez, Esq.	866-927-0571 (fax)
James F. Rumm, Esq.	
Douglas, Lopez & Rumm, LLP	<i>Attorneys for Plaintiff</i>
333 S. Anita Drive, Suite 780	
Orange, CA 92868	
Steven J. Rothans, Esq.	213-228-0400
Jill Williams	213-228-0401 (fax)
Carpenter, Rothans & Dumont	
888 S. Figueroa Street, Suite 1960	
Los Angeles, CA 90017	

BY MAIL: As follows: I am readily familiar with the City's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice correspondence is deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Anaheim, California in the ordinary course of business. The correspondence described above was placed for deposit at 200 S. Anaheim Boulevard, Anaheim, California 92805, on the date set forth above.

BY FACSIMILE: I caused the contents of said envelope to be delivered by facsimile transmission to the above addressee(s).

- BY METHOD OF OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered via Express Mail or other method of delivery providing for overnight delivery to the addressee(s) designated.
- BY HAND DELIVERY: I caused such envelope(s) to be delivered by hand to the addressee(s) designated.

I declare under penalty of perjury that the above is true and correct.

Executed at Anaheim, California.



Michelle M. Russell
Michelle M. Russell

92241v1

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>)		DEFENDANTS											
Estate of Manuel Diaz; Genevieve Huizar, an individual; John Huizar, an individual, and Lupe Diaz, an individual		City of Anaheim, a California municipal entity; Anaheim Police Department, a California municipal entity; John Welter; Officer Nick Bennallack; Officer Doe 2; and Does 1-10, inclusive											
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)		Attorneys (If Known) Moses W. Johnson *SEE ATTACHED Anaheim City Attorney's Office 200 S. Anaheim Blvd., Suite 356 Anaheim, CA 92805 (714-765-5169)											
Dana L. Douglas (714-634-3800) Douglas, Lopez & Rumm, LLP 333 S. Anita Drive, Suite 780, Orange, CA		92805											
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)											
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	<input type="checkbox"/> PTF <input type="checkbox"/> DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input type="checkbox"/> 4										
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place <input type="checkbox"/> 5 <input type="checkbox"/> 5 of Business in Another State										
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6										
IV. ORIGIN (Place an X in one box only.)													
<input type="checkbox"/> 1 Original Proceeding		<input checked="" type="checkbox"/> 2 Removed from State Court		<input type="checkbox"/> 3 Remanded from Appellate Court		<input type="checkbox"/> 4 Reinstated or Reopened		<input type="checkbox"/> 5 Transferred from another district (specify):		<input type="checkbox"/> 6 Multi-District Litigation		<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge	
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes		<input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)		CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No		MONEY DEMANDED IN COMPLAINT: <input checked="" type="checkbox"/> Amount to be proven at trial					
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)													
VII. NATURE OF SUIT (Place an X in one box only.)													
OTHER STATUTES		CONTRACT		TORTS		TORTS		PRISONER PETITIONS		LABOR			
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157		<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act			
REAL PROPERTY				IMMIGRATION				CIVIL RIGHTS		PROPERTY RIGHTS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions				<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark			
										SOCIAL SECURITY			
										<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))			
										FEDERAL TAX SUITS			
										<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609			

SACV12-01897 JVS (RNBx)

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

Continuation of Civil Cover Sheet (CV-71)

***1(b) – Additional Counsel for Defendant:**

Steven J. Rothans
Jill Williams
Carpenter, Rothans & Dumont
888 S. Figueroa Street, Suite 1960
Los Angeles, CA 90017
Tel: (213) 228-0400

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- A. Arise from the same or closely related transactions, happenings, or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
ORANGE COUNTY	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

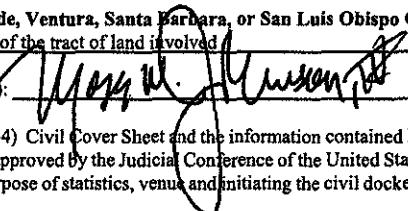
County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
ORANGE COUNTY	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: [*]	California County outside of this District; State, if other than California; or Foreign Country
ORANGE COUNTY	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date November 1, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge James V. Selna and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

SACV12- 1897 JVS (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.